

November 8, 2019

Ms. Carolina Balazs
Office of Environmental Health Hazard Assessment
1515 Clay Street, 16th Floor
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RE – Comments on the Public Review Draft Mapping Tool and Draft Report,
*Achieving the Human Right to Water in California: An Assessment of the State's
Community Water Systems*

Submitted via email: hr2w@oehha.ca.gov

Dear Ms. Balazs:

On behalf of the water utilities subject to the jurisdiction of the California Public Utilities Commission (CPUC) that comprise the California Water Association (CWA), I appreciate the opportunity to provide comments on the Office of Environmental Health Hazard Assessment's (OEHHA) Public Review Draft Report titled, *Achieving the Human Right to Water in California: An Assessment of the State's Community Water Systems* (Assessment) and Draft Mapping Tool (Data Tool).

CWA's members provide reliable, high-quality drinking water to approximately 6 million Californians, and through the CPUC's programs and policies, they have been fully engaged in all aspects of the affordability framework. Indeed, CWA's largest members have been integrating many of the 13 indicators chosen by OEHHA to measure water quality, accessibility, and affordability for many years.

Their collective performance in water quality compliance, water supply management, safe and reliable utility service, and assistance to their customers in addressing affordability challenges has moved the needle in the right direction with respect to achieving the goals of the human right to water (HR2W) law.

CWA concurs with the proposed Framework's threshold components of water quality, access to reliable supply and affordability, although it does have significant process and substantive concerns with the indicators and the Assessment's assumed interplay between the components and subcomponents.

CWA shares many of the concerns expressed in the comment letter from the Association of California Water Agencies (ACWA) and the California Municipal Utilities Association (CMUA), especially their concern that, although 98 percent of Californians receive safe, high-quality drinking water, the Draft Report could easily give the impression that this is not the case.

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In particular, CWA's member utilities had the same reaction with respect to the development of the Draft Report and Draft Tool that the ACWA and CMUA members had – namely, that there wasn't enough outreach with the rest of the water community (utilities and state agencies) during the development phase. This process concern has a specific manifestation in the Water Quality component because it appears that the State Water Board's Division of Drinking Water (DDW) was not fully consulted on the selection of the indicators.

Water Quality Component

First, the Water Quality component contains two misnomers in the component name and an indicator name. Since this component is principally concerned with drinking water, the reference should properly be to Drinking Water Quality, not just Water Quality. The latter, of course, includes many other aspects of water management, such as surface water quality and regulation, discharges and clean water regulations, etc. Also, the Non-Compliance indicator should be renamed the Compliance indicator because a layperson reading the Draft Report would otherwise be left with the impression that non-compliance is a bigger problem than is the case.

Second, the Water Quality component suffers from an inappropriate conflation of Exposure and Non-Compliance. This juxtaposition is inappropriate and misleading. For instance, combining the compliance and exposure indicators into a composite score (or even considering them as parallel sub-components) implies that compliance with drinking water regulatory standards is not sufficient for the protection of public health. All community water systems with which I work are devoted to their drinking water quality compliance obligations, and they would be dismayed to learn that their vigilance in compliance would be undermined by a more nebulous potential exposure indicator.

Additionally, while the Data Tool uses these two indicators in tandem and with comparable scoring protocols, they are treated separately, even though the same data were apparently used to underpin them. Also, the Exposure indicator is based on the same Maximum Contaminant Level (MCL) or secondary regulatory standard as the Non-Compliance indicator. Yet, the narrative and the graphics suggest that a system can have a high Exposure subcomponent score, yet still comply with the MCL. This is not possible.

For instance, if a water system has an exceedance of the arsenic MCL at an active source, there would be an MCL violation. Absent treatment or dilution before the point of entry, there would also be an exposure for at least parts of the distribution system. Accordingly, both indicators can count the same event twice, suggesting that they are basically the same metric with different names.

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From CWA's perspective, this duplication between the two indicators warrants removing the Exposure indicator from the final version of the Assessment. Using Compliance as the metric is better because it has a definition that is commonly understood by the drinking water community.

Third, there are other shortcomings in the process of developing the Water Quality component that should be addressed by OEHHA staff in consultation with DDW staff and utility stakeholders before the Assessment and Data Tool are finalized. One concerns the monitoring point for possible contamination. The Assessment appears to assume that most monitoring is done either within the utility's distribution system or at the end-user's home or building. In fact, the required monitoring for most contaminants is done at the source of the distribution system.

Again, from the narrative and the graphics in the draft Assessment, the reader may easily get the impression that sampling and testing are done in the distribution system, or at the customer's meter or household tap). This confusion certainly needs to be resolved in the final Assessment.

As noted above, OEHHA staff apparently relied on the same data point in SDWIS to derive the scores for both the Non-Compliance and Exposure indicators. There are at least three problems with the SDWIS data. The first is that there could be errors in the database. Water utility stakeholders should have access to the raw data, and there should be a universally accepted process, coordinated with the State Water Board and OEHHA, for water utilities and agencies to correct erroneous data in SDWIS before such data are used in the final Assessment ¹.

A second problem is that the groundwater data in SDWIS may be flawed. For example, a concentration over the MCL at a source exists in the database, but treatment has been applied (and not reflected) or the utility was not pumping that water to the system while the treatment was still being effectuated (also not reflected, and therefore not an exposure). A subcomponent score and/or a composite score affected by such flaws would be misleading.

Third, as the ACWA/CMUA comment letter spells out in detail, there is a huge problem with timing and duration – the 2008-2016 timeframe proposed in the Assessment will yield misleading results. Specifically, a violation that occurred years ago and was quickly corrected will still be treated in the Assessment in the same manner as a more persistent violation that is current. Therefore, a fully compliant system could be characterized as non-compliant.

¹ Also, the Assessment's timeframe is 2008-2016, yet the State Water Board's compliance map only goes back to 2012. Therefore, it is difficult to determine the source of some of the data points.

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The annual timeframe selected is too broad and doesn't capture an event where a system returns to compliance within 30 days (common for Total Coliform Rule violations where corrective action often occurs within a month). CWA endorses the ACWA/CMUA recommendation to include a temporal indicator so that there is clarity on the timing, severity, duration and resolution of a violation.

Finally, there is a big issue with the use of Total Coliform Rule (TCR) violations. The federal Revised Total Coliform Rule (rTCR) became effective on April 1, 2016, but the California TCR has not been revised and is now outdated.² Accordingly, a water utility may be in compliance with the rTCR, with no threats to public safety, while the Non-Compliance subcomponent reflects 722 violations of the California TCR (Draft Report, page 30). Here, again, there is significant potential for public confusion over the safety of drinking water.

Water Accessibility Component

CWA agrees with the ACWA/CMUA point that the assumptions underlying the physical and institutional subcomponents of water availability do fully capture the integrated regional water management benefits that many water agencies and utilities have created for themselves during the past 15 years. This is especially true with respect to the physical vulnerability subcomponent because:

1. so many of the urban water suppliers in the state have engaged in effective portfolio management of their water supply, and
2. these same urban water suppliers (plus many smaller community water systems) have or are participating in regional water supply management programs.

The latter point underscores the success of the California Department of Water Resources in making integrated regional management a high priority in its California Water Plan Update series and in its dealings with the drinking water community. Both have contributed greatly to the ability of water systems to sustain their supply capabilities and to become more resilient to adverse drought and climate change impacts.

² It is important to note that DDW has indicated an intention, when it moves forward with revisions to the California TCR, to align the revised state regulation with the federal rTCR. This should result in fewer violations issued because the federal rTCR introduces the concept of a find-and-fix approach that is documented with assessments (depending on the incidence of positive occurrences), instead of issuing violations immediately.

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With the enactment of AB 1668 (Friedman) and SB 606 (Hertzberg) in 2018, the State Water Board now has the authority to monitor water supply reliability for urban water suppliers on a much more granular basis than in the past. Some of this information should be part of the Assessment. Accordingly, CWA agrees with ACWA/CMUA that the Water Accessibility Component should incorporate the stress test results, as reported to the State Water Board, as well as the supply and demand data from Urban Water Management Plans, as reported to the Department of Water Resources.

Additional water supply information beyond groundwater and surface water sources (e.g., recycled water, desalination plants, short- and long-term supply agreements and transfers, CalWARN membership and other mutual aid agreements) should also be part of the calculus.

Finally, with respect to the narrative and graphic portrayal of the physical vulnerability subcomponent and the first Accessibility Indicator, CWA recommends that more context be added to the indicator. For instance, Table 12 lists the number and type of sources and indicator scores across the 2,903 community water systems considered. The table gives the impression that the 1-2 sources with the single indicator score are markedly inferior to the systems with 3-10 sources. It would be helpful to add a fifth column expressing the population served by the systems in the third column. I expect the results will yield a large percentage of population served by the 3 to 10-source water systems.

Also, it's not definitive that the qualitative difference between the systems with the 3 to 10 sources is as significant as the 4-3-2 indicator scores would suggest. It's quite possible that a 4-source system has a very strong accessibility profile in practice, relative to a system that has 5 to 10 sources (especially if supply sources beyond the groundwater-surface water spectrum are included in the analysis). It would be helpful to have a discussion on this point in the narrative.

Water Affordability Component

While the Human Right to Water law properly includes an affordability component, the affordability of drinking water is a very small part of a much larger affordability context, which encompasses the costs of housing, healthcare, food and other essential utilities. As such, an assessment of a community water system's affordability should not be assigned the same weight as drinking water quality and water accessibility in terms of a community water system's ability to help the state comply with the law and achieve the HR2W goals. Providing a safe, reliable, high-quality supply of drinking water at the lowest cost possible should be the guiding principle for water systems in helping the state comply with the HR2W law.

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The cost of providing safe drinking water, and therefore its affordability, is a function of many things: the source of water supply; the quality of the water source; the physical system of the water utility; the customer base; and the financial factors that affect a utility's revenue requirement.

Rates for water service will tend to be lower if the utility's:

- water source is principally groundwater
- water rights are adjudicated
- water quality treatment requirements are relatively few
- physical (treatment, storage and distribution) system is older (built at a lower historical cost)
- physical system is efficiently designed and well-maintained
- service area is relatively dense (more customers per mile of water main)
- service area terrain and topography are relatively low and flat
- customer base is relatively large (with fixed costs are spread over many customers)
- customer demand is relatively constant
- financing includes tax-free options, high connection fees, grants and low-interest loans, and subsidies from property taxes or other sources

In contrast, rates for water service will tend to be higher if the utility's:

- principal water source is imports, plus a high mix of recycled or desalinated water
- water rights are purchased or leased
- water quality treatment requirements are extensive
- physical system is newer (built more recently at a higher cost)
- physical system is not efficiently designed (piecemealed over the years)
- physical system is in disrepair, requiring constant upkeep and repair
- service area is widely dispersed, with terrain that requires pumping water to higher and varied elevations
- customer base is small (with fixed costs to be recovered from just a few customers)
- customer demand has high peaks requiring more pressure to satisfy peak demands for fire service
- financing has limited tax-free options, small or no connection fees, limited access to grants and loans, and few subsidies

Given all these variables – many of which have a large influence on the quality of and access to reliable water supply – it may be advisable for the Assessment to assign weights to the various subcomponents and indicators that feed into the three main components in deriving a community water system's composite score.

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As the OEHHA staff knows, there are multiple proceedings underway at both the State Water Board and the California Public Utilities Commission (CPUC) that are addressing affordability in a very different manner than the Assessment. The Assessment is using median household income (MHI) to derive its threshold affordability ratio for a given service area, plus the County Poverty Level and the Deep Poverty Level. The State Water Board's approach is "a household with income that is equal to or no greater than 200 percent of the federal poverty guideline level" (per AB 401, Statutes of 2015; a measure that is comparable to the MHI, but not the same).

The CPUC has two proceedings underway that are considering (1) changes to the CPUC's existing Low-Income Ratepayer Assistance (LIRA) programs³ and (2) a new framework and processes for assessing the affordability of utility service.⁴ At this point, the CPUC staff has accepted the criticism of the MHI approach by Texas A&M University Associate Professor Manny Teodoro⁵ and is recommending a complementary approach to assessing affordability by using three metrics concurrently: an Affordability Ratio to measure household affordability, an Hours at Minimum Wage metric that considers essential utility services, and an Ability to Pay Index that considers economic vulnerability.

While both the State Water Board's and the CPUC's efforts are works in progress, CWA strongly recommends that the Water Affordability Component, and especially the indicators, not be finalized until the Assessment and Data Tool are more fully informed by these other proceedings. The ACWA/CMUA comment letter also makes this point.

The CWA membership strongly recommends that OEHHA undertake a series of stakeholder meetings with the drinking water community, as well as the pertinent staff at the State Water Board prior to finalizing the Assessment and Data Tool. Its members would welcome the opportunity to participate.

Please feel free to contact me with any comments or questions.

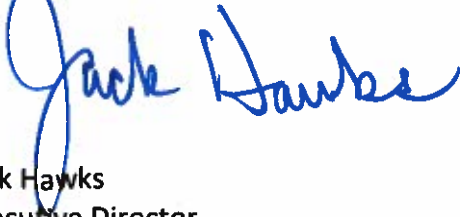
³ Order Instituting Rulemaking (R.)17-06-024, *Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate(payer) Assistance Programs, Providing Rate(payer) Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability.*

⁴ Order Instituting Rulemaking (R.) 18-07-006, *Establish(ing) a Framework and Processes for Assessing the Affordability of Utility Service*

⁵ *Measuring Household Affordability for Water and Sewer Utilities*, Journal of American Water Works Association, January 2018; <https://awwa.onlinelibrary.wiley.com/doi/epdf/10.5942/jawwa.2018.110.0002>

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Sincerely,



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